

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-5550

January 7, 1985

Ms. H--- B---
N--- B--- Inc.
XXXXX --- Street
---, CA XXXXX

Re: SR --- XX-XXXXXX

Dear Ms. B---:

Your letters dated June 30 and August 1, 1988 to the Hayward District office of the Board have been referred to us for response. You ask how sales and use tax applies to the lease of a mobile boiler room which you state is mobile transportation equipment. You state:

“This is a new unit that has been shipped to the state of Washington for lease. The lease will be from 6 months to 1 year. Are we required to pay use tax now to the state of California? Will we have to pay use tax when/if we bring it back into California? Are we required to pay tax on the rental receipts (now or later) if we do not pay use tax now?”

I assume that your characterization of the mobile boiler room as mobile transportation equipment (MTE) is accurate under Revenue and Taxation Code Section 6023. The lease of MTE is not a sale or purchase under the Sales and Use Tax Law. (Rev. & Tax. Code §§ 6006(g)(4), 6010(e)(4).) Rather, the sale of MTE for the purpose of leasing is a retail sale. (Rev. & Tax. Code § 6007.) However, a person purchasing MTE for the purpose of leasing may purchase the MTE extax by issuing the seller a resale certificate for the limited purpose of reporting the purchaser's use tax liability measured by fair rental value. (Rev. & Tax. Code §§ 6092.1, 6243.1.) The lessor's election to pay his or her use tax liability measured by fair rental value must be made by reporting tax measured by the fair rental value on the return for the period in which the equipment is first leased. (Rev. & Tax. Code §§ 6094(d), 6244(d), Reg. 1661.) If the lessor does not make a timely election, the lessor's use tax liability would be measured by the purchase price of the MTE. I assume the MTE about which you inquire was obtained extax.

When you withdraw MTE from your extax inventory for use in California, that use is subject to use tax measured by either the cost of the MTE or by fair rental value. Revenue and Taxation Code Section 6009.1 provides that “use” does not include the “keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state....” The transporting referred to in the previous section would include transportation by common carrier or by your personnel. (See Stockton Kenworth, Inc. v. State Board of Equalization (1984) 157 C.A.3d 334.)

The exclusion from the definition of use provided by Section 6009.1 does not include the situation where a lease of MTE commences in California, even if the MTE is thereafter transported outside California. The lessor in such situation is exercising a right or power over the MTE beyond merely transporting; rather, the lessor is exercising the power to use the MTE by leasing in California. Such use is not excluded by Section 6009.1.

In your August 1, 1988 letter, you state that the lease about which you inquire started when the MTE was shipped. I assume this means that the lease commenced in California. Your use of the MTE in this manner is subject to use tax which, if you make a timely election, would be measured by fair rental value of the MTE whether the MTE is within or without this state. If you do not make such a timely election, use tax would be measured by your purchase price of the MTE. If, on the other hand, the lease of the MTE commenced outside California with no functional use of the MTE in California except to transport it outside California, we would regard the transaction as initially coming within the exclusion from “use” of Section 6009.1. No tax would be due on your use of the MTE provided it is used solely outside California. We apply a six month test in this situation. If the MTE is actually used outside California for over six months, such use will satisfy the requirement of use solely outside California. (Business Taxes Law Guide Annots. 570.1040 (2/3/66), 570.1080 (5/7/57). If you bring the property back into California within six months, use tax would be due at that time measured by your purchase price (unless an election to pay use tax measured by fair rental value were made with the return for the period in which the MTE was first leased).

If you have further questions on this subject, please feel free to contact this office directly.

Sincerely,

David H. Levine
Tax Counsel

DHL:ss

bc: --- – District Administrator